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NORTHERN DISTRICT OF CALIFORNIA

5 UNITED STATES DISTRICT COURT  
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7 NORTHERN DISTRICT OF CALIFORNIA

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9 NEGER HEKMAT ALAMI  
10 SHAHROKH ALAMI  
11  
12 PLAINTIFF

) CASE# 08 0893  
13 VS. ORDER TO SHOW CAUSE  
14 SUPERIOR COURT OF CALIFORNIA, FOR PRELIMINARY INJUNCTION VRW  
15 COUNTY OF CONTRA, SAXON AND TEMPORARY RESTRAINING  
16 MORTGAGE, QUALITY LOAN ORDER  
17 SERVICE CORP,  
18 DEFENDANTS E-filing

19  
20 PLAINTIFF APPLICATION FOR A PRELIMINARY INJUNCTION AND  
21 TEMPORARY RESTRAINING ORDER

22 Plaintiff files this application for a Preliminary Injunction and a  
23 Temporary Restraining Order, in conjunction with the complaint attached  
24 herewith, based on the recent ruling of the UNITED STATES DISTRICT  
25 COURT OF OHIO, EASTERN DISTRICT, which blocks all foreclosures in  
26 Ohio until the Real Parties in interest presents proof of ownership of the  
27 loan.  
28 ////

1 In the instant case, a similar situation exists, as relates to current rage  
2 in foreclosures in the United States.

3 Mortgage Servicing Companies such as Saxon and Quality are  
4 uttering Notices of Defaults, and conducting Trustee's sales re mortgages  
5 that they do not own.

6 In the instant case, neither Saxon nor Quality are the real parties' in  
7 interest. Thus, neither has standing to commence any foreclosure action  
8 against Plaintiff in the State of California.

9 Companies such as Saxon and Quality are merely collectors of monies  
10 for the real party or parties in interest, who must bring the action to  
11 foreclose.

12 The real parties in interest are generally individuals and/or  
13 companies that buy the debt from the mortgage broker through companies  
14 that invest in CMBS (Commercial Mortgage Based Securities). These  
15 securities are sold to different investors and or/banks who, maintain the  
16 debt in SIV accounts (Structured investment vehicles) which are kept off  
17 the bank's balance sheet.

18 The mortgage servicing companies who may or may not have been  
19 involved in the loan initially, continues to collect monies from the home  
20 owner without every disclosing to the homeowner who the actual owner of  
21 the loan is, and it is often the case, that not even loan servicing companies  
22 such as Saxon or Quality knows who actual owns the loan.

23 Plaintiff further incorporates the relevant portion of the ruling by  
24 Judge Christopher A. Boyko in support of his application.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

## **IN RE FORECLOSURE CASES )**

**CASE NO. NO.1:07CV2282**

) 07CV2532  
 ) 07CV2560  
 ) 07CV2602  
 ) 07CV2631  
 ) 07CV2638  
 ) 07CV2681  
 ) 07CV2695  
 ) 07CV2920  
 ) 07CV2930  
 ) 07CV2949  
 ) 07CV2950  
 ) 07CV3000  
 ) 07CV3029

**JUDGE CHRISTOPHER A. BOYKO**

**OPINION AND ORDER  
CHRISTOPHER A. BOYKO, J.**

On October 10, 2007, this Court issued an Order requiring Plaintiff-Lenders in a number of pending foreclosure cases to file a copy of the executed Assignment demonstrating Plaintiff was the holder and owner of the Note and Mortgage ***as of the date the Complaint was filed***, or the Court would enter a dismissal. After considering the submissions, along with all the documents filed of record, the Court dismisses the captioned cases without prejudice. The Court has reached today's determination after a thorough review of all the relevant law and the briefs and arguments recently presented by the parties, including oral arguments heard on Plaintiff Deutsche Bank's Motion for Reconsideration. The decision,

1 therefore, is applicable from this date forward, and shall not have  
2 retroactive effect.  
3

4 **LAW AND ANALYSIS**

5 A party seeking to bring a case into federal court on grounds of  
6 diversity carries the burden of establishing diversity jurisdiction. *Coyne v.*  
7 *American Tobacco Company*, 183 F. 3d 488 (6th Cir. 1999). Further, the  
8 plaintiff “bears the burden of demonstrating standing and must plead its  
9 components with specificity.” *Coyne*, 183 F. 3d at 494; *Valley Forge*  
10 *Christian College v. Americans United for Separation of Church & State,*  
11 *Inc.*, 454 U.S. 464 (1982).

12 The minimum constitutional requirements for standing are: proof of  
13 injury in fact, causation, and redressability. *Valley Forge*, 454 U.S. at 472.  
14 In addition, “the plaintiff must be a proper proponent, and the action a  
15 proper vehicle, to vindicate the rights asserted.” *Coyne*, 183 F. 3d at 494  
16 (quoting *Pestrak v. Ohio Elections Comm'n*, 926 F. 2d 573, 576 (6th Cir.  
17 1991)). To satisfy the requirements of Article III of the United States  
18 Constitution, the plaintiff must show he has ***personally suffered some***  
19 ***actual injury*** as a result of the illegal conduct of the defendant.  
20 (Emphasis added). *Coyne*, 183 F. 3d at 494; *Valley Forge*, 454 U.S. at 472.  
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1           In each of the above-captioned Complaints, the named Plaintiff  
2       alleges it is the holder and owner of the Note and Mortgage. However, the  
3       attached Note and Mortgage identify the mortgagee and promisee as the  
4       original lending institution – one other than the named Plaintiff. Further,  
5       the Preliminary Judicial Report attached as an exhibit to the Complaint  
6       makes no reference to the named Plaintiff in the recorded chain of  
7       title/interest.  
8

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10       The Court's Amended General Order No. 2006-16 requires Plaintiff  
11       to submit an affidavit along with the Complaint, which identifies Plaintiff  
12       either as the original mortgage holder, or as an assignee, trustee or  
13       successor-in-interest.  
14

15       Once again, the affidavits submitted in all these cases recite the  
16       averment that Plaintiff is the owner of the Note and Mortgage, without any  
17       mention of an assignment or trust or successor interest. Consequently, the  
18       very filings and submissions of the Plaintiff create a conflict. In every  
19       instance, then, Plaintiff has not satisfied its burden of demonstrating  
20       standing at the time of the filing of the Complaint.  
21

22       Understandably, the Court requested clarification by requiring each  
23       Plaintiff to submit a copy of the Assignment of the Note and Mortgage,  
24       executed as of the date of the Foreclosure Complaint. In the above-

1 captioned cases, **none** of the Assignments show the named Plaintiff to be  
2 the owner of the rights, title and interest under the Mortgage at issue as of  
3 the date of the Foreclosure Complaint.

4 The Assignments, in every instance, express a present intent to  
5 convey all rights, title and interest in the Mortgage and the accompanying  
6 Note to the Plaintiff named in the caption of the Foreclosure Complaint  
7 upon receipt of sufficient consideration on the date the Assignment was  
8 signed and notarized.

9 Further, the Assignment documents are all prepared by counsel for  
10 the named Plaintiffs. These proffered documents belie Plaintiffs' assertion  
11 they own the Note and Mortgage by means of a purchase which pre-dated  
12 the Complaint by days, months or years. Plaintiff-Lenders shall take note,  
13 furthermore, that prior to the issuance of its October 10, 2007 Order, the  
14 Court considered the principles of "real party in interest," and examined  
15 Fed. R. Civ. P. 17 — "Parties Plaintiff and Defendant; Capacity" and its  
16 associated Commentary. The Rule is not *apropos* to the situation raised by  
17 these Foreclosure Complaints. The Rule's Commentary offers this  
18 explanation: "The provision should not be misunderstood or distorted.  
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1 It is intended to prevent forfeiture when determination of the proper  
2 party to sue is difficult or when an understandable mistake has been made.  
3

4 ... It is, in cases of this sort, intended to insure against forfeiture and  
5 injustice ..." Plaintiff-Lenders do not allege mistake or that a party cannot  
6 be identified. Nor will Plaintiff-Lenders suffer forfeiture or injustice by the  
7 dismissal of these defective complaints otherwise than on the merits.

8 Moreover, this Court is obligated to carefully scrutinize all filings and  
9 pleadings in foreclosure actions, since the unique nature of real property  
10 requires contracts and transactions concerning real property to be in  
11 writing. R.C. § 1335.04. Ohio law holds that when a mortgage is assigned,  
12 moreover, the assignment is subject to the recording  
13 requirements of R.C. § 5301.25. *Creager v. Anderson* (1934), 16 Ohio Law  
14 Abs. 400 (interpreting the former statute, G.C. § 8543).

15 "Thus, with regards to real property, before an entity assigned an  
16 interest in that property would be entitled to receive a distribution from the  
17 sale of the property, their interest therein must have been recorded in  
18 accordance with Ohio law." *In re Ochmanek*, 266 B.R. 114, 120 (Bkrtcy.N.D.  
19 Ohio 2000) (citing *Pinney v. Merchants' National Bank of Defiance*, 71  
20 Ohio St. 173, 177 (1904).<sup>1</sup>

1        This Court acknowledges the right of banks, holding valid mortgages,  
2 to receive timely payments. And, if they do not receive timely payments,  
3 banks have the right to properly file actions on the defaulted notes —  
4 seeking foreclosure on the property securing the notes. Yet, this Court  
5 possesses the independent obligations to preserve the judicial integrity of  
6 the federal court and to jealously guard federal jurisdiction.  
7

8        Neither the fluidity of the secondary mortgage market, nor monetary  
9 or economic considerations of the parties, nor the convenience of the  
10 litigants supersedes those obligations.

11      Despite Plaintiffs' counsel's belief that "there appears to be some level of  
12 disagreement and/or misunderstanding amongst professionals, borrowers,  
13 attorneys and members of the judiciary," the Court does not require  
14 instruction and is not operating under any misapprehension.

15      The "real party in interest" rule, to which the Plaintiff-Lenders  
16 continually refer in their responses or motions, is clearly comprehended by  
17 the Court and is not intended to assist banks in avoiding traditional federal  
18 diversity requirements.<sup>2</sup> Unlike Ohio State law and procedure, as Plaintiffs  
19 perceive it, the federal judicial system need not, and will not, be "forgiving  
20 in this regard."

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CONCLUSION  
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7 For all the foregoing reasons, the above-captioned Foreclosure Complaints  
8 are dismissed without prejudice.  
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13 IT IS SO ORDERED.  
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DATE: October 31, 2007

S/Christopher A. Boyko

CHRISTOPHER A. BOYKO

United States District Judge

Plaintiff has presented with sufficiency to the Court, a substantial argument to warrant the Court granting a temporary restraining order enjoining the Superior Court of California, for the County of Contra Costa from proceeding in the Unlawful Detainer action against Plaintiff pending further investigation of this matter by the Court.

Dated: \_\_\_\_\_

Respectfully Submitted

NEGER HEKMAT ALAMI

*Negar Hekmat Alami*

Plaintiff in Proper

Respectfully Submitted

SHAHROKH ALAMI

*Shahrokh Alami*

Plaintiff in Proper